

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In Re U.S. Patent No. 7,500,221 |) | |
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| Issue Date: March 3, 2009 |) | Group Art Unit: 2191 |
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| Inventor: Ralf BAUMANN |) | Examiner: Chih Ching CHOW |
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| Application No.: 10/821,825 |) | Confirmation No.: 1389 |
| |) | |
| Filed: April 8, 2004 |) | |
| |) | |
| For: FILTER-BASED COMMENTS IN |) | |
| SOURCE CODE |) | |
| |) | |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT - POST GRANT

In accordance with 37 C.F.R. § 1.705(d), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 1243 days. This application is being filed within the 2-month filing period set forth in 37 C.F.R. § 1.705(d) in light of a recent decision, rendered on September 30, 2008, by the U.S. District Court for the District of Columbia in *Wyeth v. Dudas*, No. 07-1492 (JR), 2008 U.S. Dist. LEXIS 76063 (D.D.C. Sept. 30, 2008).

U.S. Patent No. 7,500,221 currently indicates a patent term adjustment of 828 days on its cover.

Applicant has calculated a patent term adjustment of 1243 days based on the following facts:

The above-identified application was filed April 8, 2004.

The first Office action was mailed on January 10, 2008, resulting in a PTO delay of 946 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A).

Applicant filed a response to the first Office Action on March 18, 2008.

A subsequent Non-Final Office Action was mailed April 25, 2008, and Applicant filed a Response on July 10, 2008.

An Applicant delay of 120 was incurred due to Applicant submitting an Information Disclosure Statement under 37 CFR 1.97(c) after issuance of an Action on the merits.

An addition 2 days of PTO delay accrued due to the USPTO failing to issue a following action within 4 months of Applicant's Response to the previous action.

A Notice of Allowance was issued in this case on November 12, 2008, and Applicant submitted the required Issue Fee payment on January 7, 2009. An additional 417 days of USPTO delay accrued after the application had been pending for three years (between the end of the initial USPTO delay on January 10, 2008 which occurred after the third year anniversary date of April 8, 2007, and the Issue date of the Letters Patent on March 3, 2009), less 2 days of PTO delay that was concurrent during this period, for a total of 415 days). Under the USPTO's manner of calculating PTA, Applicant was not provided those additional 415 days of PTO delay.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, Patentee submits it is entitled to a total patent term adjustment of 1243 days. The sum includes the USPTO delay of 946 days for issuing the first notification under 35 U.S.C. § 132 (dated January 10, 2008), plus USPTO delay of 2 days for failing to issue an action within 4 months following an Applicant Response, and 415 days (non-concurrent delay) due to exceeding the three year pendency period, as described above, less the 120 day delay by the Applicant.


Applicant respectfully requests that the current patent term adjustment be reconsidered.

If there are any other fees due in connection with the filing of this Application, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: March 18, 2009

By: 
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